Supreme Court, U.S.
FILED
JUL 8 1993
OFFICE OF THE CLERK

No. 111 Original

In The

Supreme Court of the United States

October Term, 1991

STATE OF DELAWARE,

Plaintiff,

STATE OF TEXAS, et al.,

Plaintiff-Intervenors,

v.

STATE OF NEW YORK,

Defendant.

AMENDED COMPLAINT OF THE STATES OF MICHIGAN, MARYLAND AND NEBRASKA

DON STENBERG
Attorney General
DALE A. COMER
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
(402) 471-2940

Attorneys for the State of Nebraska

JAMES F. FLUG
[Counsel of Record]
LEE E. HELFRICH
LOBEL, NOVINS, LAMONT & FLUG
1275 K Street, N.W., Suite 770
Washington, D.C. 20005
(202) 371-6626

Attorneys for the States of Michigan, Frank J. Kelley Attorney General, and Maryland, J. Joseph Curran, Jr. Attorney General

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AUTHORITY FOR THE FILING OF AN AMENDED COMPLAINT

Pursuant to the June 8, 1993 Order of the Special Master in the above-captioned case, Litigation Management Order No. 6 (hereafter "LMO No. 6"), granting leave to the parties to amend their pleadings, the States of Michigan, Maryland and Nebraska, Plaintiffs in Intervention, file the following Amended Complaint.

On March 30, 1993, the United States Supreme Court issued its decision in *Delaware v. New York*, Orig. No. 111. The Court held that, in resolving disputes among the States over unclaimed securities distributions, the state of

incorporation of the debtor of such distributions controlled for purposes of the backup rule, first announced in *Texas v. New Jersey*, 379 U.S. 674 (1965). However, the Court did not enter judgment, but rather remanded the case to the Special Master for further proceedings, to include, *inter alia*, an opportunity for New York or "any other claimant State" to "offer . . . proof on a transaction-by-transaction basis or to provide some other proper mechanism for ascertaining creditors' last known addresses" for purposes of the Court's primary rule. Slip Op. at 16-17.

After a status conference before the Special Master on June 2, 1993, the Master issued LMO No. 6 under which he, *inter alia*, (1) established an abbreviated discovery schedule, tentatively ending in or about September 1993, in order to permit New York and State Intervenors to test the potential recovery under the primary rule; (2) required New York, by July 8, 1993, to prepare and submit a log providing details concerning its collections of unclaimed distributions and to complete discovery propounded by Delaware in order to determine recoveries under the backup rule; and (3) granted leave to the parties to file Amended Complaints by July 8, 1993. LMO No. 6 at 7.

Pursuant to LMO No. 6, the Designated States file the following Amended Complaint. The Designated States reserve the right to request further leave to amend at a

later date if necessary to conform their pleadings to the results of the discovery contemplated under LMO No. 6.

AMENDED COMPLAINT OF THE STATES OF MICHIGAN, MARYLAND AND NEBRASKA

The States of Michigan, Maryland and Nebraska (hereafter the "Designated States"), by and through their Attorneys General and counsel, hereby Amend their Complaints in Intervention and allege as follows:

I. Jurisdiction

1. The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and Section 1251 of Title 28 of the United States Code.

II. Pending Action

2. On May 31, 1988, this Court granted the motion of Plaintiff State of Delaware ("Delaware") for leave to file a complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed moneys and other intangible property held by securities brokerage firms incorporated in Delaware.

3. On December 12, 1988, Thomas Jackson, Esquire, was appointed Special Master to hear this case.

4. On February 21, 1989, the Court granted the State of Texas' ("Texas") Motion for Leave to File Complaint in

Intervention. The Texas Complaint also made subject to this suit certain additional intangible personal property held by securities brokerage firm and nonbrokerage firm intermediaries.

5. On March 30, 1993, the Court granted the motions of the States of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming, and the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia and the District of Columbia for leave to file complaints in intervention.

6. On March 30, 1993, the Court granted the motions of the States of California, Maryland, Michigan, Nebraska, Ohio, and Rhode Island for leave to file a complaint in intervention. The Complaint of these states covered all unclaimed intangible property held by all brokerage firms, regardless of where incorporated, and by banks and other nonbrokerage firm intermediaries.

7. On March 30, 1993, the Court issued a decision on various exceptions to the January 28, 1992 Report of the Special Master, clarifying the operation of its backup rule for resolving disputes among the states over the escheat or custodial taking of unclaimed intangible property, and remanded the case for further proceedings.

III. Claim of the Designated States

8. The Designated States assert their claims pursuant to their respective unclaimed property laws which provide for the escheat or custodial taking of abandoned or unclaimed tangible and intangible personal property where the owner of the property cannot be found by the holder of the property, and no claim to the property has been made within the applicable dormancy period.

9. The Designated States seek a determination of their rights to certain unclaimed intangible personal property, referred to as "Unclaimed Funds" as defined in paragraph 10 below, which comes into being and acquires its character as unclaimed property in the context of securities transactions.

10. "Unclaimed Funds" consist of unclaimed dividends, profits, principal, interest, and other payments on or with respect to securities, and securities representing any of the foregoing, held or formerly held by brokerage firms, banks, depositories, clearinghouses for settlement of trades in securities, and other nonbrokerage firm intermediaries (collectively "Intermediaries").

11. The Unclaimed Funds claimed herein consist of unclaimed property which comes into being when distributions by the entity initially issuing the shares of stock, bonds, debentures and other securities giving rise to the Unclaimed Funds, are received by Intermediaries who (a) do not themselves have a valid claim to such funds and (b) do not know the identity or location of the current beneficial owners, and thus do not know to whom to transmit the funds. Such Intermediaries do not act on their own behalf, but receive, hold, and/or remit

distributions on behalf of, or for the benefit of, others who have or have had an interest in the underlying security.

12. New York has taken possession of Unclaimed Funds to which it is not entitled.

13. The Designated States are entitled to recover from New York under the Court's primary rule those Unclaimed Funds as to which the last known address of the current or last known creditor of the Intermediary that held those funds, or of the Intermediary's principals or members, is in their respective States.

14. To the extent the primary rule cannot be applied, the Designated States are entitled to recover from New York under the Court's backup rule those Unclaimed Funds held by or on behalf of corporate Intermediaries incorporated in their respective States.

15. The Designated States further are entitled to recover from New York such Unclaimed Funds not payable under Paragraph 13 or 14 according to equitable principles determined or to be determined by the Court.

16. Alternatively, the Designated States: (a) each claim a portion of the Unclaimed Funds determined by an allocation among the states in proportion to the commercial activities, between the brokerage firms or other sellers of securities and customers whose last known addresses were, or should be presumed to have been, in the respective states, which gave rise to the Unclaimed

Funds at issue, or (b) are entitled to recover such additional portions of the Unclaimed Funds taken by New York as they may be authorized to recover.

PRAYER FOR RELIEF

WHEREFORE, the Designated States pray:

1. That New York be restrained and enjoined from demanding or collecting such Unclaimed Funds, and from expending any such sums collected, but presently unencumbered and unspent, which are attributable to Unclaimed Funds being claimed by the Designated States through this action.

2. That judgment be entered for that portion of the Unclaimed Funds to which each State is entitled as a matter of equity and under applicable principles of law, plus prejudgment interest at the prevailing rate.

3. That a reasonable fund be created from Unclaimed Funds presently being held by New York to cover the compensation of the Special Master, his technical, stenographic, and clerical assistants, the cost of printing his reports to this Court, the retention of experts to advise the Special Master as he deems necessary and appropriate and for all other proper expenses. Such funds may be credits against any interest adjudged owing with respect to such Unclaimed Funds.

4. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

DON STENBERG
Attorney General
DALE A. COMER
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
(402) 471-2940

Attorneys for the State of Nebraska

JAMES F. FLUG
[Counsel of Record]
LEE E. HELFRICH
LOBEL, NOVINS, LAMONT & FLUG
1275 K Street, N.W.,
Suite 770
Washington, D.C. 20005
(202) 371-6626

Attorneys for the States of Michigan, Frank J. Kelley Attorney General, and Maryland, J. Joseph Curran, Jr. Attorney General